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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,820	09/08/2003	Ashok V. Joshi	MIC-031103	1133
55162	7590	03/31/2006	EXAMINER	
CERAMATEC, INC. 2425 SOUTH 900 WEST SALT LAKE CITY, UT 84119			EREZO, DARWIN P	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/657,820

Applicant(s)

JOSHI, ASHOK V.

Examiner

Darwin P. Erez

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) 1-16, 24, 25, 30-33, 37, 38, 42-54, 56-59 and 64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-23, 26-29, 34-36, 39-41, 55 and 60-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly submitted claims 52-54, 56-59 and 64 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claims are directed towards a different specific type of osmotic cell than what was previously elected and currently being prosecuted. The claims are directed toward an osmotic cell comprising a salt solution with a water injection means, which is a totally different species from an electro osmotic cell. The previous election requirement combined the species for Figs. 3A and 3B since 3A was claimed as a generally-labeled osmotic cell while 3B was a specific electro-osmotic cell. This is no longer the case for the claims recited above.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 52-54, 56-59 and 64 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 17-23, 26, 34-36 and 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,167,613 to Karami et al. in view of US 4,655,766 to Theeuwes et al.

(claims 17 and 34) Karami teaches a disposable wound-therapy device comprising a fluid-impermeable housing **32** having a cavity (Fig. 5; reference number **36** shown in Fig. 5), wherein the cavity includes at least one opening to encompass a wound; a perimeter (outer edge of wall **32**) surrounding said opening; adhesive means **34** capable of sealing the perimeter to a surface of the patient; a porous sponge **40** associated with the cavity (col. 6, line 11 and col. 6, lines 46-47; foam is a sponge) and an osmotic cell **38** for removing fluid from the sponge. Karami is silent with regards to the osmotic cell transporting fluid to a separate chamber. Theeuwes teaches a skin patch having similar structure to that of Karami, wherein an osmotic cell **14** extracts fluid from the skin of a person and delivers it to a chamber formed by wall **38**. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Karami to include a separate chamber because it would provide an area for the extracted fluid to accumulate, which is separate from the cavity. This would also enhance the efficiency of the wound device of Karami since the fluid will not accumulate on the osmotic layer.

(claims 18 and 36) Karami teaches the osmotic cell to be integrated within the housing.

(claim 19 and 21) Karami teaches an antimicrobial agent (col. 7, lines 17-24) in the absorbent pad/sponge.

(claim 20) Karami teaches a sponge that is fully capable of being partially impregnated with fluid at any time frame.

(claim 22) The combination of Karami/ Theeuwes teaches a chamber that is adjacent the cavity.

(claim 23) Karami teaches the sponge to be within the cavity.

(claim 26) Karami teaches the osmotic layer **38** to be in fluid communication with layer **40**.

(claim 35) Karami teaches a device that is fully capable of continuously removing fluid from within the wound region if the suction source is continuously maintained.

(claim 39) The combination of Karami/Theeuwes is silent with regards to the chamber being outside the cavity. However it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Karami to include the chamber to be outside the cavity, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

(claim 40 and 41) The combination of Karami/Theeuwes is silent with regards to the chamber having additional means for absorbing and retaining fluid, such as a porous matrix. However, it is well known in the art to provide some type of porous matrix, such as a sponge or filter, to a retention chamber because it helps maintain the fluid within the chamber. It is the Examiner's position that this type of arrangement is well known in the art. For example Karami teaches a foam layer (porous matrix) within the cavity to help absorb and retain fluid.

4. Claims 27-29, 55 and 60-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karami et al. in view of Theeuwes et al. and in further view of US 2003/0050594 to Zamierowski.

Karami teaches a general osmotic type layer but is silent with regards to an electro-osmotic type removal means. However, Zamierowski teaches an electro-osmotic type removal means (starting at paragraph 90), which would inherently have an anode and cathode since electro-osmosis necessarily requires a gradient difference, e.g., negative and positive. Zamierowski also teaches a control system connected to a power source, which would inherently have a power switch to activate the device. Therefore, it would have been obvious to use the removal means of Zamierowski in the device of Karami because selecting a specific type of removal means would be a mere design to one of ordinary skill in the art, especially since the removal means taught by Karami and the removal means taught by Zamierowski perform the same function of removing fluids from the wound area.

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 17-23, 26-29, 34-36, 39-41, 55 and 60-63 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erez who telephone number is (571) 272-4695. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**GLENN K. DAWSON  
PRIMARY EXAMINER**